

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



RECEIVED
ROCKINGHAM
SUPERIOR COURT

ORVILLE B. "BUD" FITCH II
DEPUTY ATTORNEY GENERAL

2007 JUN 25 A 10:37

June 22, 2007

Raymond Taylor, Esquire, Clerk
Rockingham County Superior Court
PO Box 1258
Kingston, NH 03848-1258

RE: State v. John A. Brooks
Nos. 07-S-1028-1031

Dear Clerk Taylor:

Enclosed please find the State's Response to Defendant's Motion to Compel Compliance With Discovery Orders regarding the above-referenced matter. Please call if you have any questions or concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles J. Keefe".

Charles J. Keefe
Assistant Attorney General
Homicide Unit
(603) 271-3671

CJK/mmp
Enclosure

cc: Christopher H.M. Carter, Esquire
Thomas M. Hoopes, Esquire
Martin F. Murphy, Esquire

THE STATE OF NEW HAMPSHIRE

RECEIVED
ROCKINGHAM
SUPERIOR COURT

ROCKINGHAM, SS.

SUPERIOR COURT

2007 JUN 25 A 10:37

DOCKET NO. 07-S-1028-1031

STATE OF NEW HAMPSHIRE

V.

JOHN A. BROOKS

**STATE'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL
COMPLIANCE WITH DISCOVERY ORDERS**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General ("the State") and hereby responds to the defendant's motion to compel compliance with discovery orders. The State does not object to providing discovery material to the defendant, however, the State asks that this Honorable Court set a reasonable discovery deadline consistent with other homicide cases and Superior Court practice. In support thereof, the State submits the following:

1. On November 16, 2007, Las Vegas, Nevada police arrested the defendant at his home as a fugitive from justice. The defendant waived extradition back to New Hampshire, where he was charged by complaint in the Auburn District Court on December 7, 2006, with conspiracy to commit murder and first degree murder.
2. The State and the defendant then entered into an agreement wherein the State provided certain pre-indictment discovery materials to the defendant in exchange for his waiver of a probable cause hearing. The State provided the defendant with the following materials:

- a. Gerstein Affidavit in Support of Warrantless Arrest regarding the charge of first degree murder;
- b. Autopsy Report and associated material from the Commonwealth of Massachusetts' Medical Examiner's Office;
- c. Reports from the New Hampshire State Police regarding various searches and evidence recovered;
- d. Reports from the Massachusetts State Police regarding evidence recovered;
- e. Two (2) books of photographs from searches;
- f. A videotape from a search; and
- g. Compact disc with interviews of four people, to include three co-defendants.

The State also provided additional materials to include various search warrants, affidavits, and returns; possessed property reports; and laboratory reports.

3. The Grand Jury for this Court indicted the defendant on two counts of capital murder, one count of first degree murder, and one count of conspiracy to commit capital murder. As is the usual course for this Court, upon return of the indictments, the Court issued an Arraignment Order and Scheduling Notice. It is the State's understanding that the Court issues such an order and notice in every felony case. That order and notice provides that the State shall provide open-file discovery and comply with Superior Court Rules regarding discovery.

4. However, it is the usual course of the Superior Court, and this Court specifically, to hold a structuring conference in a homicide case and set various deadlines, to include discovery deadlines. See State of New Hampshire v. Sheila LaBarre (Rockingham County Superior Court, Docket No. 06-S-2506) Structuring Order dated February 7, 2007 (Coffey, J.) (attached hereto as Exhibit 1); State of New Hampshire v. Michael Addison (Hillsborough County – Northern District Superior Court, Docket No. 07-S-0254) Order dated March 13, 2007 (McGuire, J.) (attached hereto as Exhibit 2). Of note regarding LaBarre, the Court there issued the same arraignment order and scheduling notice prior to holding a structuring conference.

5. However, as is made clear by Exhibit 1, the Court in LaBarre held a structuring conference wherein it set case deadlines, to include a discovery deadline. There, the Court allowed the State 67 days from the date of the Structuring Order to provide discovery. As well, in Addison, another capital murder prosecution, the Court there allowed the State 48 days from the structuring conference Order to provide discovery. The State understands the reason for holding a structuring conference in a homicide case, and setting case deadlines at that time, is because homicide cases are generally much larger cases than other felony-level matters. Consequently, the demands upon the State to produce discovery are increased, and that is why the State is generally given a time period greater than the 30 days to produce discovery in a homicide case.

6. Here, the Court scheduled such a structuring conference for June 12, 2007. Accordingly, the State understood from the general Superior Court practice, and the practice of this Court, that a discovery deadline would be set at that conference.

However, the defendant sought a continuance of this conference with the State's assent. A structuring conference is presently scheduled for August 3, 2007.

7. Undersigned counsel has been in regular contact with the defendant's counsel regarding this issue, and both the Office of the Attorney General and the New Hampshire State Police are diligently working towards producing all discovery in this case as soon as possible. However, there are five co-defendants in this matter, the investigation has ranged across the country, and there are a number of different law enforcement agencies involved in the investigation into the homicide of Jack Reid. Contrary to the defendant's suggestion in paragraph 10 of his motion, the State is not delaying the production of discovery materials to the defendant in order to make such discovery less useful to him. Quite to the contrary, the State provided a great deal of pre-indictment discovery to the defendant so that he could begin preparing his defense. Nor is the State asking the defendant "to enter a fight for his life with one [hand] tied behind his back."

8. On today's date, the State produced to the defendant approximately 3,000 pages of discovery materials. Consistent with other homicide cases in this Court, and the other capital murder case currently being prosecuted, the State asks this Court to allow it a reasonable amount of time in order to gather and produce all of the remaining discovery materials in this case to the defendant.

9. Finally, regarding paragraph 13 of the defendant's motion, undersigned counsel misunderstood counsel's prayer for relief in this instance when they conferred prior to the filing of the motion. The State understood that the defendant would seek a

deadline in the near future for the State to produce discovery, not that it be produced immediately.

WHEREFORE, the State of New Hampshire respectfully requests that this Honorable Court:


- A. Set a reasonable discovery deadline in the near future consistent with other homicide cases cited herein; and
- B. Grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE
By its attorney

Kelly A. Ayotte
Attorney General

DATED: June 22, 2007



Charles J. Keefe
Assistant Attorney General
Homicide Unit
33 Capitol Street
Concord, NH 03301
(603) 271-3671

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was this day forwarded to Christopher H.M. Carter, Esq., Thomas M. Hoopes, Esq., and Martin F. Murphy, Esq., counsel for the defendant.

DATED: June 22, 2007



Charles J. Keefe

EXHIBIT 1

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

NOTICE OF DECISION

February 7, 2007

Kirsten B. Wilson, Esq.
Office of Attorney General
33 Capitol Street
Concord NH 03301-6397

State v. Sheila LaBarre

Docket #:
06-S-2506

Enclosed please find a copy of the Court's Order dated 2/07/2007
relative to:

Court Order - Motion To Preserve Evidence
Structuring Conference Order

Raymond W. Taylor, Clerk
P.O. Box 1258
Kingston, NH 03848-1258
603-642-5256

cc: H. Edward McBurney Esq.
R. Bradford Bailey Esq.
Jeffrey A. Denner Esq.
Timothy Bradl, Esq.

12

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

ROCKINGHAM, SS.

No. 06-S-2506

State of New Hampshire

v.

Sheila LaBarre

STRUCTURING ORDER

The defendant, Sheila LaBarre, stands indicted for first-degree murder. See RSA 630:1-a (1996 & Supp. 2006). On February 1, 2007, counsel for both the State and the defendant met with the Court informally in a chambers conference for the purpose of scheduling pre-trial discovery and motions deadlines, as well as the dates of trial in the above-captioned matter. The Court is cognizant of the defendant's incarcerated status and speedy trial concerns. Defense counsel suggested that their preference for trial would be October 2007. Given the amount of time that has elapsed since the defendant's arrest, the Court was prepared to docket this trial for October or sooner. However, the State informed the Court of unusual difficulties in its preparation of this case, including much work yet to be completed by forensic experts, which will likely require extensive hearings and the engagement of defense experts as well. Further, once the State's experts have completed their reports, the defense will necessarily require additional time to analyze those reports, potentially challenge the State's findings, and prepare its case.

Accordingly, after full consultation with counsel, the Court finds the

A TRUE COPY ATTEST
CLERK 

following scheduling order to be appropriate and realistic:

Jury selection and individual *voir dire* will begin the week of March 10, 2008, and continue through the week of March 17, 2008. Ms. LaBarre's trial will commence on March 24, 2008.

The State indicates that it has provided general discovery to the defense; any remaining discovery materials need to be turned over by April 15, 2007. The State shall remain under a continuing obligation to disclose new discovery.

Counsel for the defendant shall file notice of all statutory defenses by June 1, 2007.

The State shall disclose all expert witnesses and their reports by June 1, 2007.

The defendant's discovery motion deadline is June 1, 2007.

All motions for depositions shall be filed by August 1, 2007.

Motions to suppress evidence, and any other dispositive motions, shall be filed by August 1, 2007.

All Daubert motions, see Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993), shall be filed by September 15, 2007.

The defense shall disclose all reciprocal discovery by November 1, 2007.

All depositions shall be completed by November 30, 2007.

Motions *in limine* shall be filed by January 1, 2008.

The State shall provide a complete witness list by January 30, 2008.

The defense shall provide a complete witness list by February 15, 2008.

A status conference will be scheduled for late summer of this year, or at such time as the parties might request.

So ORDERED.

2-7-07
DATE

PC Coffey
PATRICIA C. COFFEY
Presiding Justice

A TRUE COPY ATTEST

CLERK [Signature]

EXHIBIT 2

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
NORTHERN DISTRICT

SUPERIOR COURT

State of New Hampshire

v.

Michael Addison

Docket No.: 07-S-0254

ORDER

Trial Date

September 2, 2008: Jury Selection with trial to begin immediately after the jury is selected

Motions Deadlines

March 19, 2007: State's motion to try other pending cases against the defendant before the capital murder case.

March 29, 2007: Defendant's response

April 5, 2007: Hearing

May 7, 2007: Defendant's motions challenging grand jury process or indictment

May 25, 2007: State's responses

June 7, 2007: Hearing

July 9, 2007: Defendant's motions to dismiss, motions challenging constitutionality of death penalty statute, motions challenging aggravating factors; and any other related or dispositive motions

July 27, 2007: State's responses

August 9, 2007: Hearing

September 10, 2007: Defendant's motions to suppress statements and/or any other evidence and change of venue

September 28, 2007: State's responses

October 11, 2007: Hearing

September 17, 2007: State's motions challenging defenses

October 4, 2007: Defendant's responses

October 11, 2007: Hearing

July 7, 2008: Trial motions (N.H. Rule of Evidence 404(b), and evidentiary motions in limine)

July 25, 2008: Responses

August 7, 2008: Hearing

Discovery Deadlines

May 7, 2007: State's discovery deadline for investigative reports, interviews and lab reports in the State's possession

July 2, 2007: State's disclosure of experts re: forensic evidence

September 3, 2007: Defendant's disclosure of experts re: forensic evidence

January 7, 2008: Defendant's disclosure of mental health or other experts and of discovery re: mental health or other defenses

March 3, 2008: State's disclosure of mental health and/or other experts

May 5, 2008: Depositions of expert witnesses

June 2, 2008: Depositions of lay witnesses

June 16, 2008: Defendant's disclosure of reciprocal discovery

Notices

May 7, 2007: State's notice of intent to seek death penalty

September 3, 2007: Defendant's notice of defenses

**Proposed Jury Instructions
and Voir Dire**

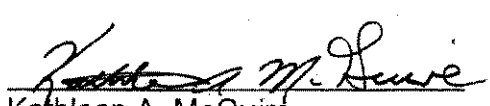
July 7, 2008: The State and defendant shall provide proposed jury instructions for both guilt and sentencing phases of trial and proposed *voir dire* questions for jury.

The Court does not generally entertain motions filed *ex parte* except for extraordinary circumstances. The Court also discourages the parties from filing motions under seal as such filings are inconsistent with the right of the public access to court proceedings. If motions are filed under seal, they are subject to unsealing by the Court, after hearing.

SO ORDERED.

Date

3/13/07


Kathleen A. McGuire
Presiding Justice